

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice, and on behalf of the Office of Inspector General ("HHS-OIG") of the United States Department of Health and Human Services ("HHS"); (hereinafter collectively the "United States"); and Nursing Home Care Management, Inc. d.b.a. Prestige Home Care Agency (hereinafter "Prestige"). The United States, HHS-OIG, and Prestige are collectively referred to herein as "the Parties."

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Prestige is a corporation with its principal offices located at 10890 Bustleton Avenue, Philadelphia, Pennsylvania 19116, in the Eastern District of Pennsylvania federal judicial district. Prestige provides health services in the form of home health care visits and treatment for patients including Medicare Beneficiaries in many locations within the Eastern District of Pennsylvania federal judicial district. Claims for reimbursement for the services to the Medicare beneficiaries were submitted to the Medicare program.

B. This Agreement addresses the United States' civil claims against Prestige for submitting claims to Medicare for the provision of home health aid services to Medicare beneficiaries by providers who lacked proper training and were thus in violation of the conditions of participation. This Agreement also addresses the Covered Conduct as that term is defined herein in Paragraph II D.

C. The Medicare program allows for the provision of home health care services including the services of home health aides under certain conditions. To be eligible to

serve as a home health aide for purposes of Medicare reimbursement, the person must have successfully completed 75 hours of classroom and supervised practical training addressing such skills as: observation, reporting and documentation of patient status; reading and recording temperature, pulse and respiration; basic infection control procedures and recognizing emergencies and knowledge of emergency procedures. 42 C.F.R. § 484.36.

D. The United States contends that it has certain civil claims against Prestige under the False Claims Act, 31 U.S.C. §§ 3729-3733, and common law doctrines for the following conduct relating to the provision of these Medicare home health aide services from January 1998 to December 1999 (hereinafter the "Covered Conduct"):

(i) billing for home health aid services rendered by providers who lacked any training and were thus ineligible;

(ii) billing for home health aid services rendered by providers who had incomplete training and were thus ineligible.

E. The United States also contends that it has certain administrative claims against Prestige under the provisions for permissive exclusion from any Federal Health Care Program, 42 U.S.C. § 1320a-7(b), the provisions for civil penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and the provisions for civil monetary penalties under the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

F. Prestige denies the contentions of the United States as set forth in Paragraphs D and E, above.

G. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Prestige agrees to pay to the United States a total of One Million Four Hundred Fifty-Five Thousand Nine Hundred and Sixty-Eight Dollars (\$1,455,968.00) (the "Settlement Amount"). The payment will be made within thirty (30) days of the Effective Date as defined in Paragraph 21 below. Prestige will make the payment by electronic funds transfer pursuant to written instructions to be provided by the United States.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Prestige set forth in this Agreement, conditioned upon Prestige's payment in full of all sums due hereunder, and subject to Paragraph 12 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release Prestige and (i) its divisions, affiliates and subsidiaries, (ii) its current and former officers, directors and employees, and (iii) its predecessors, successors, assigns, and transferees, from any civil or administrative monetary claims the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for payments made by the Medicare program for the Covered Conduct as more fully described in paragraph II D above.

3. In consideration of the obligations of Prestige set forth in this Agreement and the Corporate Integrity Agreement (CIA) incorporated herein by reference, conditioned upon

Prestige's payment in full of all sums due hereunder, and subject to Paragraph 12 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the HHS-OIG agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Prestige or (i) its divisions, affiliates, and subsidiaries and (ii) its predecessors, successors, assigns, and transferees under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks and other prohibited activities), for the Covered Conduct as more fully described in paragraph II D above, except as reserved in Paragraph 4 below, and as reserved in this Paragraph. The HHS-OIG expressly reserves all rights to comply with any statutory obligations to exclude Prestige under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the HHS-OIG from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4 below.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following claims by the United States or its agencies or departments:

- (1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;
- (3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct. Additionally any liability to the United States (or its agencies)

for any conduct under any federally funded health care program other than Medicare;

(5) Any claims based upon such obligations as are created by this Agreement including, but not limited to those created by the Corporate Integrity Agreement referred to in paragraph 6 below;

(6) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(7) Any civil or administrative claims against any individuals, including current and former officers and employees, that are not based upon the Covered Conduct;

(8) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of Prestige who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are criminally indicted or charged, or are convicted of an offense or who enter into a criminal plea agreement related to the Covered Conduct;

(9) Any claims submitted to the Medicare or Medicaid Programs by the Released Parties after December 1999.

5. Prestige waives and will not assert any defenses Prestige may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on the Double Jeopardy Clause in the Fifth Amendment of the Constitution, the Excessive Fines Clause in the Eighth Amendment of the Constitution or the holding or principles set forth in United States v. Halper, 490 U.S. 435 (1989) and Austin v. United States, 113 S.Ct. 2801 (1993), and agrees that the Settlement Amount is not punitive in nature or effect for purpose of such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States

concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

6. On or about this same date Prestige has entered into a Corporate Integrity Agreement (CIA) with HHS-OIG as set forth in Attachment A, and incorporated herein by reference. Prestige shall begin implementation of the Corporate Integrity Agreement in accordance with the terms and definitions set forth therein.

7. The Settlement Amount that Prestige must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary related to the Covered Conduct; and Prestige agrees not to resubmit to any Medicare or Medicaid carrier or intermediary any previously denied claims related to the Covered Conduct for the home health care services, and agrees not to appeal any such denials of claims.

8. Prestige agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR) § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395gg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Prestige, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program and Federal Employees Health Benefits Program (FEHBP);

- (1) the matters covered by this Agreement;
- (2) the United States, audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) Prestige's investigation, defense, and corrective actions undertaken in response to the United States' investigation in connection with the matters covered by this Agreement (including attorneys fees);

(4) the negotiation and performance of this Agreement;

(5) the payment Prestige makes to the United States pursuant to this Agreement, including any costs and attorneys fees; and

(6) the negotiation of, and obligations undertaken pursuant to the CIA to:

(i) Retain an independent review organization to perform annual reviews as described in Section III of the CIA; and

(ii) prepare and submit reports to the HHS-OIG, are unallowable costs. Nothing in this paragraph 8(a)(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Prestige.

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for by Prestige and Prestige will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Prestige or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Prestige further agrees that within 90 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and

Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Prestige or any of its subsidiaries or affiliates, and will request, and agree, that such costs reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Prestige agrees that the United States, at a minimum, will be entitled to recoup from Prestige any overpayment as a result of the prior inclusion of what have now been defined as unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Prestige or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Prestige or any of its subsidiaries, costs reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

9. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity except as specifically provided in this Agreement.

10. Prestige agrees that it waives and will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries, or their parents, sponsors, legally responsible individuals or third-party payors. Prestige waives any causes of

action against these beneficiaries, or their parents, sponsors, legally responsible individuals or third-party payors, based upon the claims for payment covered by this Agreement.

11. Prestige expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(A)(ii)(1), and fully expects to remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Prestige, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

12. In the event Prestige commences, or a third party commences, within 91 days of the effective date of this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Prestige's debts, or seeking to adjudicate Prestige or any of its affiliates as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Prestige or for all or any substantial part of Prestige's assets, Prestige agrees as follows:

a. Prestige's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Prestige will not argue or otherwise take the position in any such case, proceeding or action that: (i) Prestige's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Prestige was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Prestige.

b. In the event that Prestige's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Prestige or any defendant as named in the Complaint for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. If the United States chooses to do so, Prestige agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Prestige from participation in the Federal Health Care Programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Prestige will not argue or otherwise contend that the United States, claims, actions or proceedings are subject to an automatic stay; (ii) Prestige will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceeding which are brought by the United States within 180 calendar days of written notification to Prestige that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this Agreement; and (iii) the United States has a valid claim against Prestige and the United States may pursue its claim, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Prestige acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

13. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this

Agreement.

14. Prestige represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

15. The Parties agree that this Agreement does not constitute an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issue of law or fact. The Parties also agree that the performance under this Agreement of any of the obligations of Prestige, its affiliates, divisions, subsidiaries, their predecessors, successors, assigns, transferees, and any of their current or former directors, officers, employees or agents shall not constitute nor be construed as an admission by any person or entity, with respect to any issue of law or fact.

16. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA.

17. This Agreement and the CIA referenced in paragraph 6 above constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only HHS-OIG and Prestige must agree in writing to amendments to the CIA.

18. The undersigned individuals signing this Agreement on behalf of Prestige represent and warrant that they are authorized by Prestige to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.


19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

20. Prestige understands that this Agreement may be disclosed to the public and consents to the same.


21. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

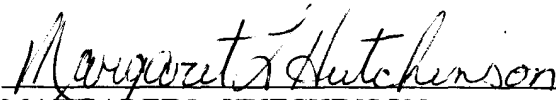
Dated: 10/26/04

BY: 
PATRICK L. MEEHAN
United States Attorney

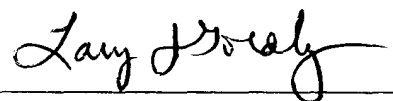
Dated: 10/26/04

BY: 
VIRGINIA A. GIBSON
Assistant U.S. Attorney
Chief, Civil Division

Dated: 10/26/04

BY: 
MARGARET L. HUTCHINSON
Assistant U.S. Attorney
Eastern District of Pennsylvania

Dated: 9/28/04

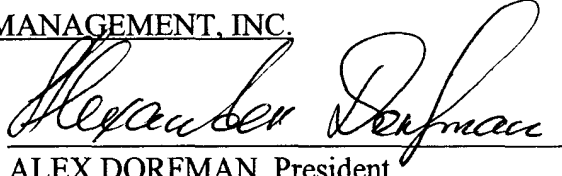
BY: 
LARRY J. GOLDBERG
Assistant Inspector General for
Legal Affairs Office of Inspector General
United States Department of Health
and Human Services

NURSING HOME CARE MANAGEMENT, INC.

Dated: _____

10/20/2004

BY: _____

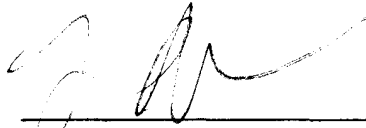


ALEX DORFMAN, President
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Dated: _____

04/19/2004

BY: _____



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